

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

Applicant: John B. Amundson et al. Confirmation No.: 3578
Serial No. 10/725,826 Examiner: Charles R. Kasenge
Filing Date: December 2, 2003 Group Art Unit: 2125
For: CONTROLLER INTERFACE WITH SEPARATE SCHEDULE REVIEW MODE
Docket: H0005444-1161.1140101

PRE-APPEAL REQUEST FOR REVIEW

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Lynn Thompson

August 22, 2007
Date

Applicants submit that the Examiner's rejections contain at least the following clear errors and/or omissions of one or more essential elements needed for a prima facie rejection.

Claims 1-33 and 38-40 are rejected as being anticipated by Ehlers et al. (U.S. 7,130,719). The Examiner asserts that Ehlers discloses a method of accessing a schedule on a controller including the steps of initiating a schedule review mode that permits viewing access only and not permitting editing access to at least one schedule parameter, citing column 11, lines 57-63 and column 15, lines 17-27 for support. The Examiner states that the "view heat/cool/auto mode" of Ehlers is being interpreted as the claimed schedule review mode, and the "change the heat/cool/auto mode" as the editing mode. The Examiner then asserts that since the "view mode" is separate from the "change mode", it is clear that the view mode provides viewing access only. See page 3, lines 1-3 of the Office Action. Applicants respectfully disagree. The Examiner has not provided any support or reasoning for such an interpretation, which is clearly not supported by the disclosure of Ehlers et al. Ehlers et al. do not appear to teach or suggest a view mode or change mode or that such modes are separate. The portion of Ehlers et al. cited by the Examiner is as follows:

Using the user interface 1.14, the customer may directly access and control in-home devices 1.08. For example, with regard to the thermostat 1.30D, the customer may view current temperature, view current heating or cooling setpoint(s), override heating or cooling setpoint(s), resume scheduled heating or cooling setpoint(s), view heat/cool/auto mode, change the heat/cool/auto mode...

All changes made at the thermostat 1.30D can be communicated to the gateway node 1.10D or be received during a poll of the thermostat 1.30D. In one embodiment, the following functions can be accessible directly from the thermostat 1.30D:

- View current temperature. 4.20 "67F"
- View current heating or cooling setpoint. 4.20 "Heat: 58", "Cool: 85"
- Override heating and cooling setpoints. 4.22C
- Resume scheduled heating and cooling setpoints. 4.22E
- View Heat/Cool/Auto mode. 4.20 "AUTO"
- Change Heat/Cool/Auto mode. 4.22A
- Activate/deactivate the fan. 4.22B

Emphasis added (italicized/underlined reference numerals are added and refer to the illustrated thermostat shown in Figure 4C); see column 11, lines 57-63 and column 15, lines 17-27.

As can readily be seen, the cited portion of Ehlers et al. does not teach or suggest a schedule review mode permitting viewing access only, while not permitting editing access to at least one schedule parameter in the schedule. The cited portion of Ehlers et al. merely discloses a user interface with various functions, but does not teach anything regarding when viewing access and editing access is granted to the user. Regarding FIG. 4C, Ehlers state at column 43, line 43 through column 44, line 2:

The display section 4.20 includes information related to the actual or real time conditions at the site 1.04. In the illustrated embodiment as shown, the current temperature within the customer site 1.04 is 67° Fahrenheit. The heating and cooling set points are set to 58° and 85°, respectively. The system 3.08 is in an automatic mode and the heating and cooling systems are in an off condition. Furthermore, as indicated, the occupancy mode is set to "Away". As discussed below, the system 3.08 allows the customer to program the HVAC systems use the virtual thermostat 4.18 and according to occupancy modes using heating and cooling set points. By using the thermostat buttons 4.22, the customer can change the current operating parameters of the thermostat. For example, selection of a change system mode thermostat button 4.22A allows the customer to select between automatic and manual modes. Selection of a change fan mode button 4.22B allows the customer to change the fan mode from "on" to "automatic". Furthermore, selection of an override temperature button 4.22C or an override occupancy button 4.22D allow the customer to override the current temperature and occupancy schedules as defined below. Selection of a cancel override button 4.22E allows the customer to cancel a temperature or occupancy change which

was input using the override temperature button 4.22C or the override occupancy button 4.22D. A cancel curtailment button 4.22F allows a customer to cancel any curtailment program (where permissible).

Emphasis added. While in the alleged "view" mode, as shown in Figure 4C, there is no indication that the user cannot also change the System Mode (4.22A), as the Examiner appears to be suggesting. In fact, as can be seen in the above-quoted portion of Ehlers et al., it appears that the display 4.2 (Figure 4C) allows the user to view the current system settings, and edit those settings without restriction.

In the Advisory Action mailed August 6, 2007, the Examiner asserts that the phrase "allows the customer to select" in Ehlers et al. implicitly means the user did not have the ability before, therefore a new mode is "initiated". Applicants do not understand this reasoning. In Figure 4C of Ehlers et al., the user actually makes changes by simply touching one of buttons 4.22A-4.22F. Thus, when at the interface shown in Figure 4C of Ehlers et al., the user has direct and ready access to make whatever changes are desired by simply touching one of buttons 4.22A-4.22F. Thus, it is difficult to see how Figure 4C of Ehlers et al. provides a schedule review mode that permits "viewing access only and not permitting editing access to at least one schedule parameter in the schedule", as recited in claim 1.

Additionally, the cited portions of Ehlers et al. do not appear teach a schedule review mode. FIG. 4C of Ehlers et al. shows a screen which permits the user to: change system mode (4.22A); change fan mode (4.22B); override temperature (4.22C); override occupancy (4.22D); cancel override (4.22E); and cancel curtailment (4.22F). None of these, however, appear to correspond to a schedule parameters, as recited in, for example, claim 1. In view of the foregoing, Figure 4C of Ehlers et al. cannot be seen to teach each and every element in the same detail as is recited in the independent claims, as required under 35 U.S.C. § 102.

Regarding claims 2-5, 13-16, and 26-29, the Examiner asserts that Ehlers teaches initiating an editing mode within the controller, and while in the editing mode, modifying at least one schedule parameter of the schedule, wherein the schedule review mode must be exited before the editing mode is initiated. The Examiner points to the same above-quoted passages of

Ehlers et al. for support. As detailed above, the above-quoted portions of Ehlers et al. do not teach exiting a schedule review mode before initiating an editing mode.

Regarding independent claims 25 and 39, the Examiner asserts that Ehlers et al. discloses a programmable controller including a user interface, a processor configured to run a scheduling routine for modifying a schedule, where the scheduling routine includes a separate schedule review mode and editing mode, and where the schedule review mode is configured to permit the user to display one or more schedule parameters on the user interface without allowing the user to modify at least one of the schedule parameters without first initiating the editing mode. The Examiner again points to the same above-quoted passages of Ehlers et al. for support. As detailed above, the above-quoted portions of Ehlers et al. do not teach anything regarding a scheduling routine, and more specifically, a scheduling routine that includes a separate schedule review mode and editing mode, or a schedule review mode configured to permit the user to display one or more schedule parameters on the user interface without allowing the user to modify at least one of the schedule parameters without first initiating the editing mode.

MPEP 2131 states that, in order to anticipate a claim, "[t]he identical invention must be shown in as complete detail as is contained in the ... claim." *Richardson v. Suzuki Motor Co.*, 868 F.2d 1226, 1236, 9 USPQ2d 1913, 1920 (Fed. Cir. 1989)." Applicants submit that Ehlers et al. clearly do not teach the identical invention in as complete detail as in the claims. Further, if the Examiner is considering that a separate review mode permitting viewing access only and not permitting editing access to at least one schedule parameter is inherent in Ehlers et al., Applicants submit that there is no basis for such an interpretation. MPEP 2112 IV. states:

The fact that a certain result or characteristic may occur or be present in the prior art is not sufficient to establish the inherency of that result or characteristic. *In re Rijckaert*, 9 F.3d 1531, 1534, 28 USPQ2d 1955, 1957 (Fed. Cir. 1993) (reversed rejection because inherency was based on what would result due to optimization of conditions, not what was necessarily present in the prior art); *In re Oelrich*, 666 F.2d 578, 581-82, 212 USPQ 323, 326 (CCPA 1981). "To establish inherency, the extrinsic evidence 'must make clear that the missing descriptive matter is necessarily present in the thing described in the reference, and that it would be so recognized by persons of ordinary skill. Inherency, however, may not be established by probabilities or possibilities. The mere fact that a certain thing may

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result from a given set of circumstances is not sufficient.' " *In re Robertson*, 169 F.3d 743, 745, 49 USPQ2d 1949, 1950-51 (Fed. Cir. 1999)

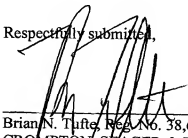
(Emphasis added). Applicants submit that the claimed method steps, in particular the steps of initiating a schedule review mode permitting viewing access only and not permitting editing access, are not necessarily present in Ehlers et al. It appears the Examiner may be asserting that the claimed method steps could be performed by the system of Ehlers et al., which is not a proper basis for rejection. For these and other reasons, the Examiner has failed to meet the burden of providing a reference that discloses each and every element of the claims, in the same detail as recited in the claims. The anticipation rejection of independent claims 1, 13, 25, 39, 40, and the claims dependent thereon is thus believed to be in clear error.

Claims 34-37 are rejected as being unpatentable over Ehlers et al. and further in view of Smith (US 6,192,282). The Examiner acknowledges that Ehlers et al. fails to disclose a controller for a security, lightning, sprinkler or A/V system, but asserts that it would have been obvious to implement a review mode for the Ehlers application controller according to the Smith patent. As detailed above, the cited portion of Ehlers does not appear to teach or suggest the basic elements of independent claim 25, from which claims 34-37 depend. The Smith patent does not appear to provide what Ehlers et al. lacks. Thus, even if one were to combine the references, one would not arrive at the claimed invention. The rejection of claims 34-37 is thus believed to be in clear error.

Respectfully submitted,

Dated:

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